

REMARKS

Claims 4, 5, 8-17, and 19 have been amended merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Claims 7, 21-27, 33 have been canceled.

The specification has been updated to include the missing serial numbers, removal of the objection is respectfully requested.

Claim Objections

Claims 6, 18, and 28-32 have been amended merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved. The informalities have been corrected, removal of the objections is respectfully requested.

Rejection under 35 U.S.C. § 112

Claims 17, 19, 28, 30, and 32 have been amended merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Claims 17 and 19 use the term “tearing,” which is defined in the specification on page 7, line 23 as, “According to the invention tearing may also be referred to as pre-mixing.” It should be clear to those of ordinary skill in the art that “teared into the gum base” means pre-mixing into the gum base. The verb tense has been changed from “tear” to “torn” to merely clarify the invention.

Accordingly, the rejections under 35 U.S.C. §112, second paragraph, have been traversed and removal of the objections is respectfully requested.

Rejection under 35 U.S.C. § 102

The Examiner rejected claims 21-27 under 35 U.S.C. 102(b) as being anticipated by CHERUKURI (US 4,753,805, cols. 2-8) or YANG (EP 0 221 850, cols. 3, 7-10 and claim 13). This rejection is moot as the claims have been canceled.

Rejection under 35 U.S.C. § 103

The Examiner rejected claims 1-19 and 28-32 under 35 U.S.C. 103(a) as being anticipated by CHERUKURI (US 4,753,805, cols. 2-8) or YANG (EP 0 221 850, cols. 3, 7-10 and claim 13). The Examiner contends that it would have been obvious to include the magnesium stearate lubricant in the outer layer of the tablets since the purpose of the lubricant is to reduce friction between the inner die wall and the tablet edge during ejection and to prevent capping. This contention is respectfully traversed.

Under MPEP 2143.03, in order to establish a *prima facie* case of obviousness, the Office must give due consideration to all of the limitations of a claim. The Office must also sufficiently establish a motivation to combine or modify the teachings of the prior art in order to reach a claimed invention in accordance with MPEP 2143.01. Obviousness rejections “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). For at least the reasons set forth below, Applicant respectfully submits that the combined art of record fails to render any of the present claims obvious.

Applicant submits that the art of record fails to teach or suggest all of the limitations recited in each independent claim in accordance with MPEP 2143.03. For instance, Applicant notes that independent claim 1 recites “said gum base granules having a moderated tackiness,” and “chewing gum center fully or partly encapsulated by a barrier layer.” These limitations, among others recited in claim 1, are neither taught nor suggested by the combined art of record. Applicant therefore submits that the combined art of record fails to teach or suggest all of the limitations of claim 1 in accordance with MPEP 2143.03. Accordingly, Applicant respectfully

submits that the combined art of record fails to render present claim 1 obvious in accordance with MPEP 2143, and respectfully requests that the rejection be withdrawn.

CHERUKURI discloses a compressible chewing gum product with varying moisture content and with varying amounts of compression and grinding aids. YANG discloses a tableted chewing gum containing active ingredients entrapped in a delivery system.

Neither of these references suggest encapsulation of a chewing gum center by a barrier layer. An example of such is illustrated in Figure 3 of the application. The barrier layer of the present invention may comprise lubricants, anti-adherents, or glidants. The incorporation of lubricants, anti-adherents, or glidants in the barrier layer diminishes the need for them in the chewing gum composition. This leads to moderated tackiness of the gum base granules since the individual gum base granules are influenced by lubricants to a much smaller extent than is the case in the references.

Neither CHERUKURI nor YANG give any hints regarding a barrier layer, let alone a barrier layer comprising one or more lubricants, anti-adherents, or glidants. On the contrary, GHERUKURI is directed towards substantial amounts of compression aids in the compressible composition, up to 15% by weight of the chewing gum tablet. YANG also uses considerable amounts of lubricants in the chewing gum composition, up to 5% by weight of the total composition.

The moderated tackiness of the gum base granules of the present invention is not addressed by CHERUKURI or YANG. The long-felt need to obtain compressed chewing gum tablets resembling conventional chewing gum with respect to cohesion of the chewing gum formulation is solved by the present invention by diminishing the need for lubricants, anti-adherents and glidants in the compressible chewing gum formulation, thereby promoting inter-particle cohesion of the gum base-containing chewing gum granules.

Thus, neither CHERUKURI nor YANG teach, suggest, or motivate one skilled in the art to encapsulate the compressed chewing gum tablet within a barrier layer comprising at least one of lubricants, anti-adherents, or glidants, thereby facilitating a moderated tackiness of the gum base granules.

Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for non-obviousness.

Consequently, neither CHERUKURI nor YANG make obvious any of the claims. Reconsideration and allowance of all pending claims is respectfully requested.

Double Patenting Rejection

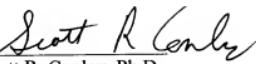
The Examiner has provisionally rejected claims 1-19 and 28-32 on the grounds of non-statutory obviousness-type double patenting as being un-patentable over claims 1-20 and 34 of copending Application No. 10/520,387. The Examiner has also provisionally rejected claims 1-19 and 28-32 on the grounds of non-statutory obviousness-type double patenting as being un-patentable over claims 1-55 of copending Application No. 11/028.684 in view of CHERUKURI or YANG.

The provisional rejection of claims 21-27 and 33 is moot because these claims have been canceled.

Upon indication of allowable subject matter in this case, Applicants will file the appropriate terminal disclaimers in order to overcome these rejections.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513)651-6818 or via e-mail at srconley@fbtlaw.com.

Respectfully submitted,
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